

# **Exhibit A**

As filed with the U.S. Securities and Exchange Commission on November 7, 2024

Registration No. 333-282516

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Amendment No. 1  
to  
**FORM S-1**

REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933

**MULLEN AUTOMOTIVE INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**001-34887**

(Commission  
File Number)

**86-3289406**

(I.R.S. Employer  
Identification Number)

**1405 Pioneer Street,  
Brea, California 92821  
(714) 613-1900**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**David Michery  
President, CEO and Chairman  
1405 Pioneer St  
Brea, CA 92821  
Tel: (714) 613-1900**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

**With Copies to:**

**Katherine J. Blair  
Michael W. Kelker  
Jones Day  
555 South Flower Street, 50<sup>th</sup> Floor  
Los Angeles, CA 90071-2300  
(213) 489-3939**

**Approximate date of commencement of proposed sale to the public:** As soon as possible after the effective date hereof.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

☐

Non-accelerated filer

☒

Accelerated filer

☐

Smaller reporting company

☒

Emerging growth company

☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said section 8(a), may determine.

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On October 24, 2024, Bollinger Motors issued to Robert Bollinger (the “**Lender**”) an Amended and Restated Secured Promissory Note (the “**Bollinger Note**”) for a principal amount of \$10.0 million. The Bollinger Note amends and restates a \$5.0 million Secured Promissory Note issued by Bollinger Motors to the Lender on October 22, 2024. The Bollinger Note is intended to provide additional capital for Bollinger Motors production and sale of the B4, Class 4 EV truck. The Bollinger Note bears interest at a rate of 15% per annum and has a maturity date of October 30, 2026. An initial interest-only payment is due on November 29, 2024, and then on the first day of each month starting January 1, 2025, based on a payment schedule. The Bollinger Note is secured by the assets of Bollinger Motors, excluding inventory and certain intellectual property. Upon an event of default, such as a failure to pay when due, a breach of any representation, warranty or covenant, bankruptcy, a material adverse change, or any other material breach of the Bollinger Note, the principal amount of the Bollinger Note, together with all accrued interest, will become immediately due and payable. The Bollinger Note contains customary representations, warranties and covenants, including among other things and subject to certain exceptions, covenants that restrict Bollinger Motors from incurring additional indebtedness or allowing any encumbrance with respect to the collateral for the Bollinger Note, other than certain permitted debt and liens (as described in the Bollinger Note), disposing of any collateral and selling all or substantially all of the assets or voting securities of Bollinger Motors.

In October 2024, the Company announced that it will reduce overall spend by executing a 20% reduction in headcount across the Company’s operations, eliminate its passenger vehicle programs, and conduct facility consolidations through termination of property leases and subleasing of non-critical property. Mullen continues to focus on overall near term commercial revenue generation while streamlining operational efficiencies.

On May 21, 2024, the Company entered into the Equity Line of Credit (“**ELOC**”) Purchase Agreement (the “**Purchase Agreement**”) with Esousa LLC (the “**Investor**”), pursuant to which the Investor agreed to purchase from the Company, at the Company’s direction from time to time, in its sole discretion, from and after July 5, 2024, and until the earlier of (i) the 36-month anniversary of the Commencement Date of July 16, 2024, or (ii) the termination of the ELOC Purchase Agreement in accordance with the terms thereof, shares of Common Stock, having a total maximum aggregate purchase price of \$150,000,000, upon the terms and subject to the conditions and limitations set forth below. In connection with the ELOC Purchase Agreement, the Company also entered into a registration rights agreement, pursuant to which the Company agreed to file a registration statement and any additional registration statements, with the SEC covering the resale of the shares of the Company’s common stock issued to Investor pursuant to the ELOC Purchase Agreement. In August and September 2024, the Company issued 247,934 shares of Common Stock to Esousa as commitment shares and on October 23, 2023, the Company issued 502,066 shares of Common Stock with proceeds of approximately \$1.1 million pursuant to the terms of the ELOC Purchase Agreement. The Company can continue to access the ELOC if it files another registration statement with the SEC.

#### **Reverse Stock Split**

Effective September 17, 2024, the Company implemented a reverse stock split at a ratio of 1-for-100 shares (the “**September 2024 Reverse Stock Split**”). The September 2024 Reverse Stock Split did not change the authorized number of shares or the par value of the Common Stock nor modify any voting rights of the Common Stock. No fractional shares were issued in connection with the September 2024 Reverse Stock Split and each fractional share resulting from the September 2024 Reverse Stock Split were rounded up to the next whole share.

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*An investment in our securities has a high degree of risk. Before you invest you should carefully consider the risks and uncertainties described below, together with all of the other information in this prospectus, including “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements and related notes, as well as the “Business” section in this prospectus, before engaging in any transaction in our securities.. Any of the risks and uncertainties set forth herein could materially and adversely affect our business, results of operations and financial condition, which in turn could materially and adversely affect the trading price or value of our securities. Additional risks not currently known to us or which we consider immaterial based on information currently available to us may also materially adversely affect us. As a result, you could lose all or part of your investment.*

**Risks Related to this Offering, our Securities, Capital Requirements and Financial Condition**

*We may not be able to raise additional funding nor generate or obtain sufficient cash flows to service all of our existing and future liabilities when they become due, and we may be forced to take other actions to satisfy our obligations, which may not be successful.*

We may be unable to obtain alternative sources of financing in an amount sufficient to fund our existing and future liquidity needs. To date, we have yet to generate any significant revenue from our business operations. Our current working capital and development needs have been primarily funded through the issuance of convertible indebtedness, convertible preferred stock and common stock. We will need significant capital to, among other things, conduct research and development, increase our production capacity, and expand our sales and service network. Our ability to successfully expand our business will depend on many factors, including our working capital needs, the availability of equity or debt financing, and, over time, our ability to generate cash flows from operations. During the nine months ended June 30, 2024, the Company used approximately \$145.2 million of cash for operating activities.

The Company’s principal source of liquidity consists of existing cash and restricted cash of approximately \$4.0 million as of June 30, 2024. If we are unable to obtain funding or a refinancing or some restructuring of our obligations or other improvement in liquidity, we may not be able to service all our liabilities when they become due. The Company is actively pursuing additional funds and remains discussing with potential financiers (see *Note 21 - Subsequent events* of the unaudited consolidated financial statements for the period ended June 30, 2024). However, there is no guarantee that the Company will be able to restructure its liabilities and/or secure the necessary financing on favorable terms. If any of our significant obligations are accelerated, we may not be able to repay the obligations that become immediately due and will have severe liquidity restraints.

We are currently evaluating strategic alternatives to address our liquidity issues. Still, we cannot assure you that any of our strategies will yield sufficient funds to meet our working capital or other liquidity needs. Any such alternative measures may be unsuccessful or may not permit us to meet scheduled obligations, which could cause us to default on our obligations. As a result, we may seek bankruptcy court protection to continue our efforts to restructure our business and capital structure. We may have to liquidate our assets and may receive less than the value at which those assets are carried on our consolidated financial statements.

*Our liquidity issues, which can force us to seek protection under federal bankruptcy laws, may impact our business and operations.*

Due to the uncertainty about our ability to obtain sufficient cash to service current and future liabilities, there is risk that, among other things:

- third parties’ confidence in our ability to develop and manufacture explore and produce electric vehicles, which could impact our ability to execute on our business strategy;
- it may become more difficult to retain, attract or replace key employees;
- employees could be distracted from performance of their duties or more easily attracted to other career opportunities; and
- our suppliers, vendors and service providers could renegotiate the terms of our arrangements, terminate their relationship with us or require financial assurances from us.

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***Our commitments to issue shares of Common Stock or securities that are convertible into shares of Common Stock may cause significant dilution to our stockholders.***

The outstanding principal and accrued but unpaid interest on the Notes may be converted by the holder into shares of Common Stock at the lower of (i) \$549.00, (ii) 95% of the closing sale price of the Common Stock on the date that the Initial Registration Statement is declared effective, or (iii) 95% of the lowest daily volume weighted average price in the five trading days prior to such conversion date, provided, that the conversion price will not be less than \$1.16 per share, not subject to adjustment. The Warrants are exercisable for 200% of the shares of Common Stock underlying the Notes at an exercise price equal to 105% of closing sale price of the Common Stock on execution date, subject to further adjustment

Finally, for a period beginning on May 14, 2024 and ending on the one year anniversary from the later of (i) the date registration statements registering the shares issuable upon conversion of all Notes and exercise of all Warrants is declared effective or (ii) the date the Company has obtained stockholder approval for the transaction, the investors have the right, but not the obligation, to purchase an additional \$52.6 million of 5% Original Issue Discount Senior Secured Convertible Notes and related Warrants on the same terms and conditions as provided in the Securities Purchase Agreement.

The Company has also adopted the CEO Award Incentive Plan 2022, approved by the Board and by stockholders in 2022, and the CEO Award Incentive Plan 2023, approved by the Board and by stockholders in 2023. Under these plans, the Chief Executive Officer is entitled to share-based awards generally calculated as 1-3% of then outstanding number of shares of common stock, issuable upon achievement of specific financial and operational targets (milestones) that are supposed to significantly increase value of the Company. Total shares of common stock to be issued under the Plans will depend on probability of the milestone achievement and on the number of shares of common stock outstanding on the day a milestone is achieved. See further details in the item 11 and in the notes to the financial statements.

The issuance of additional shares Common Stock or issuance of shares Common Stock upon the conversion of shares of Notes and exercise of the Warrants or upon sales pursuant to the ELOC Purchase Agreement, would dilute the percentage ownership interest of holders of our Common Stock, dilute the book value per share of our Common Stock and increase the number of our publicly traded shares, which could depress the market price of our Common Stock.

***Our commitment to issue shares of Common Stock pursuant to the terms of the Notes, the ELOC Purchase Agreement, our preferred stock and Warrants could encourage short sales by third parties, which could contribute to the future decline of our stock price.***

Our commitment to issue shares of Common Stock pursuant to the terms of the Notes, the ELOC Purchase Agreement, our preferred stock and Warrants has the potential to cause significant downward pressure on the price of our Common Stock. In such an environment, short sellers may contribute exacerbate any decline of our stock price. If there are significant short sales of our Common Stock, the share price of our Common Stock may decline more than it would in an environment without such activity. This may cause other holders of our Common Stock to sell their shares. If there are many more shares of our Common Stock on the market for sale than the market will absorb, the price of our Common Stock will likely decline.

The Selling Stockholders may participate in short sales of our Common Stock. They may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the shares of Common Stock in the course of hedging in positions they assume. The Selling Stockholders may also sell shares of Common Stock short and deliver shares of Common Stock covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The Selling Stockholders may also loan or pledge shares of Common Stock to broker-dealers that in turn may sell such shares. Such activity could cause a decline in the market price of the shares of our Common Stock.

***Pursuant to the terms of the Securities Purchase Agreement, the Company may not be able to sell securities in order to obtain additional financing, which could force us to delay, limit, reduce or terminate our product development efforts or other operations.***

During the period commencing on the execution date of the Securities Purchase Agreement and ending on the date immediately following the 90th day after the latest of: (i) the execution date and (ii) the date on which a registration statement (or registration statements) registering for resale all registrable securities under the Registration Statement has been declared effective by the SEC. The Company may file more than one registration statement to register all shares of Common Stock issuable pursuant to the Notes and Warrants, including additional Notes and Warrants that may be issued pursuant to the Additional Investment Right.

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If the Company agrees, with certain exceptions, not to directly or indirectly issue, offer, sell, or otherwise dispose of (or make any announcement) any equity security or any equity-linked or related security, any convertible securities, debt (with or related to equity), any preferred stock or any purchase rights (the “**Lock-up Period**”) and is unable to sell securities, then we may not have the necessary financing to carry out our business plan. If adequate funds are not available to us on a timely basis, we may be required to delay, limit, reduce or terminate our establishment of sales and marketing, manufacturing or distribution capabilities, development activities or other activities that may be necessary to commercialize our proposed products or other development activities. We might not be able to obtain any funding, and we might not have sufficient resources to conduct our business as projected, both of which could mean that we would be forced to curtail or discontinue our operations.

***We may not be able to maintain compliance with the continued listing requirements of the NASDAQ Capital Market.***

Our Common Stock is listed on the Nasdaq Capital Market. To maintain that listing, we must satisfy minimum financial and other requirements including, without limitation, a requirement that our closing bid price be at least \$1.00 per share.

On September 16, 2024, we received formal notice from the Listing Qualifications department (the “**Staff**”) of The Nasdaq Stock Market LLC (“**Nasdaq**”) that, based upon the closing bid price for our Common Stock, for the previous 30-consecutive business day period, the Company no longer satisfied the minimum bid price requirement for continued listing on The Nasdaq Capital Market, as set forth in Nasdaq Listing Rule 5550(a)(2) (the “**Bid Price Rule**”). The Staff further indicated that, based upon the Company’s implementation of one or more reverse stock splits within the past two years at a cumulative ratio of 250 shares or more to one in contravention of Nasdaq Listing Rule 5810(c)(3) (A)(iv), the Company’s securities were subject to delisting unless the Company timely requests a hearing before the Nasdaq Hearings Panel (the “**Panel**”).

Effective September 17, 2024, the Company implemented a reverse stock split at a ratio of 1-for-100 shares. In order to evidence full compliance with the Bid Price Rule, the Company must evidence a closing bid price of at least \$1.00 per share for a minimum of 10, but generally not more than 20, consecutive business days. On October 16, 2024, the Company received formal notice from Nasdaq confirming that it had regained compliance with the minimum bid price requirement set forth in Nasdaq Listing Rule 5550(a)(2) and the previously scheduled Nasdaq hearing before the Panel was canceled.

While Nasdaq rules do not impose a specific limit on the number of times a listed company may effect a reverse stock split to maintain or regain compliance with the Bid Price Rule, Nasdaq has stated that a series of reverse stock splits may undermine investor confidence in securities listed on Nasdaq. Accordingly, if in the future the Company is not in compliance with the Bid Price Rule and effectuates another reverse stock split, Nasdaq may determine that it is not in the public interest to maintain our listing, even if we regain compliance with the Bid Price Rule. In addition to the September 2024 Reverse Stock Split, the Company previously effected a 1-for-25 reverse stock split on May 4, 2023, a 1-for-9 reverse stock split on August 11, 2023 and a 1-for-100 reverse stock split on December 21, 2023.

If our Common Stock ceases to be listed for trading on the Nasdaq Capital Market, we would expect that our Common Stock would be traded on one of the three tiered marketplaces of the OTC Markets Group (the “**OTC Mkts**”). If Nasdaq were to delist our Common Stock, it would be more difficult for our stockholders to dispose of our Common Stock and more difficult to obtain accurate price quotations on our Common Stock. Our ability to issue additional securities for financing or other purposes, or otherwise to arrange for any financing we may need in the future, may also be materially and adversely affected if our common stock or warrants are not listed on a national securities exchange. The OTC Markets are generally regarded as a less efficient trading market than The Nasdaq Capital Market or Global Market or the New York Stock Exchange.

Although the OTC Mkts do not have any listing requirements, to be eligible for quotation on the OTC Mkts, issuers must remain current in their filings with the SEC or applicable regulatory authority. If we are not able to pay the expenses associated with our reporting obligations, we will not be able to apply for quotation on the OTC Board. Market makers are not permitted to begin quotation of a security whose issuer does not meet this filing requirement. If we are delisted to the OTC Mkts and no market is ever developed for our common stock or warrants, it will be difficult for you to sell any shares you purchase in this offering. In such a case, you may find that you are unable to achieve any benefit from your investment or liquidate your shares without considerable delay, if at all.

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G&A expenses include all non-production expenses incurred by us in any given period. This includes expenses such as professional fees, salaries, rent, repairs and maintenance, utilities and office expense, employee benefits, depreciation and amortization, advertising and marketing, settlements and penalties, taxes, licenses and other expenses. We expense advertising costs as incurred. General and administrative expenses increased by approximately \$140.5 million or 187% from approximately \$75.3 million in the twelve months ended September 30, 2022, to approximately \$215.8 million in the twelve months ended September 30, 2023, primarily due to increases in marketing, listing and regulatory fees, office expenses, settlements and penalties, and payroll related expenses with the growth of personnel and resources.

**Interest Expense**

Interest expense decreased by approximately \$22.0 million or 81% from approximately \$26.9 million through the twelve months ended September 30, 2022, to approximately \$5.0 million through the twelve months ended September 30, 2023, primarily due to a decrease in convertible debt that has been fully converted in Q1 and Q2 of the 2023 fiscal year.

**Impairment**

Due to unfavorable market conditions and decline of the market prices of the Company's common stock, we have tested long-lived asset for recoverability. As a result of the impairment test performed on September 1, 2023 by independent professional appraisers, the Company has recognized impairment losses in amount of \$84,631,000 that related to goodwill (Bollinger segment), property, plant, and equipment, and intangible assets (ELMS/Mullen segment). See more details below.

**Net Loss**

The net loss attributable to common stockholders (after preferred dividends) was \$964.9 million, or \$1,574.14 net loss per share, for the twelve months ended September 30, 2023, as compared to a net loss attributable to common stockholders after preferred dividends of \$780.0 million, or \$63,085.26 loss per share, for the twelve months ended September 30, 2022.

**Liquidity and Capital Resources**

To date, we have yet to generate any significant revenue from our business operations. We have funded our capital expenditure and working capital requirements by selling equity securities, as further discussed below. Our ability to successfully expand our business will depend on many factors, including our working capital needs, the availability of equity or debt financing, and, over time, our ability to generate cash flows from operations.

The Company's principal source of liquidity consists of existing cash and restricted cash of approximately \$4.0 million as of June 30, 2024 and approximately \$155.7 million as of September 30, 2023. During the nine months ended June 30, 2024, the Company used approximately \$145.2 million of cash for operating activities. During the twelve months ended September 30, 2023, the Company used approximately \$179.2 million of cash for operating activities. The net working capital deficit on June 30, 2024 amounted to approximately \$59.0 million, or \$10.4 million, after excluding derivative and warrant liabilities, Series E Preferred Stock liability, ELOC commitment fees, and liabilities to issue stock that are supposed to be settled by issuing common stock without using cash. The net working capital on September 30, 2023 was positive and amounted to approximately \$58.5 million, or approximately \$133.3 million after excluding derivative liabilities and liabilities to issue stock that are supposed to be settled by issuing common stock without using cash. For the nine months ended June 30, 2024, the Company incurred a net loss of \$327.0 million, and as of June 30, 2024, our accumulated deficit was \$2,143.3 million. For the year ended September 30, 2023, the Company has incurred a net loss of \$1,006.7 million and, as of September 30, 2023, our accumulated deficit is \$1,862.2 million. This creates substantial doubt about the Company's ability to continue as a going concern, as its cash on hand may be insufficient to meet its working capital and capital expenditure requirements for a period of at least twelve months from the date of the filing of the Quarterly Report on Form 10-Q for the period ended June 30, 2024.



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If the Company does not secure adequate funding to fulfill its current liabilities, it anticipates seeking bankruptcy protection in various jurisdictions within 30 days of publishing these financial statements. The Company anticipates that its available funds will be insufficient to cover its obligations for at least the next twelve months from the date of that the Quarterly Report on Form 10-Q for the period ended June 30, 2024 was filed. Consequently, there is significant uncertainty regarding the Company's ability to continue operating. The Company is actively pursuing additional funds (see *Note - 21 Subsequent Events*). However, there is no guarantee that the Company will be able to restructure its debts and/or secure the necessary financing on favorable terms.

The Company is evaluating strategies to obtain the required additional funding for future operations. These strategies may include, but are not limited to, obtaining equity financing, issuing debt, or entering other financing arrangements, and restructuring of operations to grow revenues and decrease expenses. However, given the impact of the economic downturn on the U.S. and global financial markets, the Company may be unable to access further equity or debt financing when needed. As such, there can be no assurance that the Company will be able to obtain additional liquidity when needed or under acceptable terms, if at all.

Despite these efforts, there can be no assurance that our plans will be successful in alleviating the substantial doubt about our ability to continue as a going concern. These financial statements do not include any adjustments that might result from the outcome of this uncertainty, such as the potential need to liquidate assets, restructure operations, or make other significant changes to the business model.

**Debt**

To date, our current working capital and development needs have been primarily funded through the issuance of convertible notes with warrants, convertible preferred stock with warrants, and common stock.

The short-term debt includes loans due within twelve months from the balance sheet date, in addition to loans that have matured and remain unpaid. Management plans to renegotiate matured loans with creditors for favorable terms, such as reducing interest rates, extending maturities, or both; however, there is no guarantee favorable terms will be reached. Until negotiations with creditors are resolved, these matured loans remain outstanding and will be classified as short-term debt on the balance sheet. Interest and fees on loans are being accounted for within accrued interest.

On May 14, 2024, the Company entered into a Securities Purchase Agreement (the "**Securities Purchase Agreement**") with certain accredited investors for the sale of Senior Secured Convertible Notes ("**Convertible Notes**") and five-year warrants exercisable for shares of common stock (the "**Warrants**"). The investors have purchased senior secured convertible notes of \$52.6 million, or \$50.0 million, including the 5% original issue discount, bearing 15% interest and maturing in 4 months.

The holder may convert the outstanding principal and accrued but unpaid interest on the Notes into shares of common stock at the lower of (i) \$5.49, (ii) 95% of the closing sale price of common stock on the date the Company's registration statement on Form S-1 is declared effective (i.e. \$3.61) or (iii) 95% of the lowest daily volume weighted average price in the five (5) trading days before such conversion date, provided that the conversion price will not be less than \$1.16 per share.

As security for payment of the amounts due and payable under the Convertible Notes, the Company collaterally assigned and granted to the Holder a continuing security interest in all of the Company's right, title, and interest in, to, and under the property of the Company, whether then or hereafter owned, existing, acquired or arising and wherever then or hereafter located (subject to certain exceptions). The Convertible Notes are senior in right of payment to all other current and future notes to which the Company is a party. The Convertible Notes also impose restrictions on the Company, limiting additional debt, asset liens, stock repurchases, outstanding debt repayment, dividends distribution, and affiliate transactions, except for specified exceptions.



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**MULLEN AUTOMOTIVE INC.**  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

*ELOC commitment fees*

On May 21, 2024, the Company entered into the Equity Line of Credit (“ELOC”) Purchase Agreement (the “Purchase Agreement”) with Esousa LLC (the “Investor”), pursuant to which the Investor agreed to purchase from the Company, at the Company’s direction from time to time, in its sole discretion, from and after July 5, 2024, and until the earlier of (i) the 36-month anniversary of the Commencement Date of July 16, 2024, or (ii) the termination of the ELOC Purchase Agreement in accordance with the terms thereof, shares of common stock, having a total maximum aggregate purchase price of \$150,000,000, upon the terms and subject to the conditions and limitations set forth below. In connection with the ELOC Purchase Agreement, the Company also entered into a registration rights agreement, pursuant to which the Company agreed to file a registration statement and any additional registration statements, with the SEC covering the resale of the shares of the Company’s common stock issued to Investor pursuant to the ELOC Purchase Agreement.

After the Commencement Date (as defined above), on any business day selected by the Company, the Company may, from time to time and at its sole discretion, direct the Investor to purchase a number of shares of common stock that does not exceed 20% of the trading volume on the Nasdaq Stock Market on the applicable purchase date at a purchase price per share equal to 94% of the lower of (i) the lowest daily VWAP of any trading day during the 15 trading days before, and including, the purchase date; and (ii) the closing price of the common stock on the applicable purchase date. The Company will control the timing and amount of any sales of its common stock to the Investor, and the Investor has no right to require the Company to sell any shares to it under the Purchase Agreement. Actual sales of shares of common stock to the Investor under the Purchase Agreement will depend on a variety of factors to be determined by the Company from time to time, including (among others) market conditions, the trading price of its common stock, and determinations by the Company as to available and appropriate sources of funding for the Company and its operations. The Investor may not assign or transfer its rights and obligations under the Purchase Agreement. The Company’s right to direct the Investor to purchase shares is subject to certain conditions precedent, including continued listing on Nasdaq or another major stock exchange.

The Purchase Agreement prohibits the Company from directing the Investor to purchase any shares of common stock if those shares, when aggregated with all other shares of common stock, then beneficially owned by the Investor and its affiliates, would result in the Investor and its affiliates beneficially owning more than 9.99% of the then total outstanding shares of the Company’s common stock.

The Purchase Agreement may be terminated by the Company at any time, at its sole discretion, without any cost or penalty. From and after the date of the Purchase Agreement until its termination, the Company agreed not to effect or enter into an agreement to effect any issuance by the Company or any of its subsidiaries of common stock or common stock equivalents (or a combination of units thereof), involving a Variable Rate Transaction (as defined in the Purchase Agreement), other than in connection with an exempt issuance as described in the Purchase Agreement. The Investor has agreed not to cause or engage in any manner whatsoever any direct or indirect short selling or hedging of the Company’s common stock.

As consideration for its commitment to purchase the Company’s common stock under the Purchase Agreement, the Company agreed to issue shares of common stock equal to \$6.0 million divided by the lower of (i) the VWAP on the effective date of the Initial Registration Statement and (ii) the closing price of the common stock on the effective date of the Initial Registration Statement (the “Commitment Shares”) to the Investor. Half of the Commitment Shares will be issued upon the effective date of the Initial Registration Statement, and the remaining amount will be delivered upon stockholder approval of the issuance of shares in excess of the Exchange Cap (as defined above); provided that all Commitment Shares will be issued by the date that is 6 months from the date of the Purchase Agreement. The commitment fee of \$6.0 million as of June 30, 2024, per the Purchase Agreement, could theoretically be settled with 2,500,000 shares of common stock.